

ARTICLE 9

SECTION 14

TRUSTS AND ANNUITIES

This section is intended to clarify Medi-Cal policy regarding the establishment of trusts and their effect on eligibility. This section does not address burial trusts. For regulations regarding burial trusts, refer to Section 11 of this Article.

When a trust includes the assets of another person, the trust regulations only apply to that portion of the trust containing the assets of the individual or spouse. In determining the amount of countable property, prorate the property held in the trust, in the month, based on the proportion of the individual's or spouse's assets that have been transferred to the trust.

Exempt assets, when transferred into a trust, such as the exempt home, remain exempt. Placement of an exempt asset in a trust does not change the exempt nature of the asset. Pension funds and annuities held in the name of the applicant's spouse, the community spouse, parent, or parent's spouse are exempt if the person is ineligible or does not choose to receive Medi-Cal.

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1. DEFINITIONS

Assets:

Means all income and property of the individual or the individual's spouse, including income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:

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- A. The individual or the individual's spouse; or
- B. Any other individual or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse; or
- C. Any other individual or entity, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

Trust:

Means any agreement in which an individual or entity (trustor) transfers assets to a trustee or trustees with the intent that the assets be held, managed or administered by the trustee(s) for the benefit of the trustor or certain individuals (beneficiaries). The trust must be valid under State law. The term "trust" also include any legal instrument or device similar to a trust as described below.

Similar Legal Device (SLD):

Means any legal instrument, device or arrangement (written or oral) that involves the transfer of assets from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the assets be held, managed, or administered by an individual or entity for the benefit of the transferor or certain other individuals. This also includes annuities purchased on or after August 11, 1993.

Revocable Trust:

Means a trust which can be revoked by its own terms or a trust deemed to be revocable under State law. The trust principal is available property to anyone who can revoke the trust and who can use the principal thereafter, whether or not he/she actually does it. If a trust is revocable, the right to revoke is usually reserved for the trustor. The trust beneficiary does not generally have authority to revoke the trust; however, if the trust itself gives the beneficiary access to the property without trustee intervention, then the property will be considered the trust beneficiary's property. Occasionally, a trustee may have the authority to revoke a trust; however, he/she might not have the legal right to use the property to meet his/her own needs. In such cases, the property would be considered unavailable to the trustee.

Irrevocable Trust:

Means a trust which cannot be revoked by its own terms or a trust deemed to be irrevocable under State law. A trust may be irrevocable even though it may be modified under the terms of the trust. The trust may state, for example, that the trustor may at any time during his/her lifetime amend any of the terms of the trust agreement by a notarized written instrument signed by the trustor and delivered to the trustee. A revocable trust is considered to be irrevocable whenever the trustor dies or becomes incompetent and the trust documents have not provided that the power to revoke the trust be passed on to the trustee or another person. The terms of a revocable trust could make the trust irrevocable if a triggering event takes place, such as the entry into long term care.

Trustor, Settlor or Grantor:

Means an individual who creates a trust.

Beneficiary:

Means any individual or individuals designated in the trust instrument as benefiting in some way from the trust.

Trustee:

Means any individual(s), entity, trust advisory committee, or individual(s) with power of appointment, who manages, holds or administers a trust for the trust beneficiary or beneficiaries.

Principal/Corpus - The principal of the trust refers to:

- Original investments of income, property or property rights placed in the trust.
- Any subsequent additions of income, property or property rights into the trust.
- Any income (such as interest and dividends) generated by the income, property or property rights placed in the trust for which there are no provisions in the trust documents for distribution.

Annuitant:

Means a person who has the right to receive payments from an annuity. The annuity shall be annuitized based upon the life expectancy of the annuitant.

Annuitized (specific to OBRA'93)

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Means an annuity that is paying in fixed, equal payments to the annuitant on a periodic basis. Payments shall be no less frequent than monthly over a number of years equal to or less than the annuitant's life expectancy as indicated in life expectancy tables provided by the Secretary of the Department of Health and Human Services. The final annuity payment may be an amount less than the previous fixed annuity payments in order to fully exhaust benefits under the annuity.

An annuity will be considered annuitized even though it may provide a reasonable cost of living adjustment (i.e., equal to or less than 5% annual increase).

Annuity:

Is a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as the annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity.

Annuities may be purchased privately or commercially. Insurance companies may sell annuities once they are certified to do so by the Insurance Commissioner.

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Annuities are either deferred or immediate:

- Deferred Annuities — payments are available as either a cash lump sum, or fixed payments to begin after a period of time specified in the contract.

- Immediate Annuities — Periodic payments begin immediately after the purchase.

Annuities purchased prior to August 11, 1993, established by will, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Article 9, Section 6, Item 5 and Article 10. For example, a periodic payment plan resulting from a personal injury settlement paid from municipal funds rather than a commercial annuity contract.

If annuity is contained within a trust, evaluate the trust first. The annuity would be evaluated as a trust asset.

2. GENERAL

Trusts shall be classified in three ways:

- A. Medicaid Qualifying Trusts (MQT): A trust established prior to August 11, 1993 as described in 3. below.
- B. OBRA 93 Trusts: A trust established on or after August 11, 1993 as described in 4. below.
- C. Other Trusts: A trust other than MQT and OBRA 93 Trusts, as described in 5. below.

A written trust shall be verified by examining the trust documents and any other related documents.

An oral trust shall be verified by written affidavit and by any other related documents. Affidavits shall be dated and signed under penalty and perjury, and shall specify the terms of the oral agreement. Real property cannot be held in an oral trust.

3. MEDICAID QUALIFYING TRUST (MQT) AND SIMILAR LEGAL DEVICE (SLD)

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- A. Is established with the individual or spouse's property rights, prior to August 11, 1993, other than by will, by an individual or the individual's spouse, or by the individual's guardian, conservator, or legal representative who is acting on the individual's behalf; and which
- B. Provides that the individual or the spouse receive all or part of the income or principal of the trust, that is dispersed directly or to another person or entity on behalf of that individual; and which
- C. Gives the trustee(s) discretion in distributing funds to the individual, spouse or to another person or entity on behalf of that individual; and
- D. May be established to enable the individual or spouse to qualify for Medi-Cal; and

E. If the MQT is revocable, the principal in it is considered available property; and the income is available income subject to treatment in Article 10.

F. If the MQT is irrevocable:

1) Any amount distributed from the principal of the MQT to the individual, spouse or to another person or entity on behalf of that individual or spouse shall be available property.

2) Any amount distributed from the income of the MQT to the individual, spouse or to another person or entity on behalf of that individual or spouse shall be considered income.

3) The maximum amount that the trustee(s) could distribute to the individual, spouse or to another person or entity on behalf of that individual or spouse from the trust principal is available property. The maximum amount is the amount the trustee(s) may distribute if the trustee(s) were to exercise full discretion under the terms of the MQT, even though it is not distributed.

4) The maximum amount that the trustee may distribute to the individual, spouse, or to another person or entity on behalf of that individual or spouse, from trust income, if the trustee were to exercise full discretion under the terms of the MQT, but which is not distributed, is determined as below depending on the terms of the trust:

- If undistributed trust income remains trust income, count as income in the first month distribution was possible and available property the month following. If a payment is made at a later time, consider this a conversion of property.
- If undistributed trust income becomes principal, count as income in the first month distribution was possible, and review the terms of the trust to determine treatment of principal for following months. Then follow the procedures for counting trust principal.

5) If the trust document does not address the distribution of trust income at all, trust income immediately becomes trust principal. Review the terms of the trust to determine the maximum extent of the trustee's discretion over trust principal and treat in accordance with the procedures for evaluating trust principal.

6) Any amount of trust principal for which the trustee(s) has no discretion to release to the individual, spouse or to another person or entity on behalf of that individual or spouse shall be considered transferred property. The date of the transfer shall be the date the trust was established, or the date the trust receives the property, or the date disbursement is foreclosed, whichever is the most recent.

7) Any amount of trust income that the trustee(s) has no discretion to release to the individual, spouse or to another person or entity on behalf of that individual or spouse shall be treated as indicated below after reviewing the terms of the trust:

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- If undistributed trust income remains trust income under the terms of the trust, it shall be considered transferred assets. The date of the transfer shall be the date that disbursement is foreclosed, or the date the trust receives the income, whichever is the most recent.
- If undistributed trust income is principal under the terms of the trust, review the terms of the trust to determine how principal may be distributed and follow the procedures for evaluating principal.

Example: Ann Jones is applying for Medi-Cal on behalf of her husband Bob who is in long-term care. She declares that she and her husband placed all of their property into a living trust on September 20, 1992. Ann and Bob are both trustors and are named as trustees. The trust document has been set up as irrevocable and provides the trustee with full discretion for distribution of trust principal and income. The trust contains approximately \$100,000 in personal property which produces income, as well as the principal residence, and one other piece of no income producing real property.

When property or property rights are placed into an irrevocable living trust, the trust document must be examined to determine the maximum extent of the trustee's discretion to make disbursements to the individual or spouse, or to another person or entity on behalf of the individual, in order to determine the amount that may be considered available property or income.

In this example, the living trust is an MQT because it meets the following requirements:

- The trust was established prior to August 11, 1993; and
- The trust was established by the applicant and his/her spouse, the trustor; and
- The applicant and spouse are trust beneficiaries to all or part of the payments from the trust; and
- The trustees (the applicant and spouse) have at least some discretion over the trust principal and/or trust income.

Even though the trust is irrevocable, the applicant has discretion over the full amount of trust principal and trust income, therefore the entire amount in the trust is considered available property and income.

G. Transfer of Property/Assets Consideration

To calculate the period of ineligibility for making a transfer of property, the date of transfer and the uncompensated value must be determined. To determine whether or not a period of ineligibility for such a transfer should be assessed, see Article 9, Section 7, Items 3 and 4.

1) Date of Transfer

The date of transfer is one of the following depending upon the situation. One or more of the following may occur in a single trust:

- The date the MQT or SLD was established.
- The date on which the disbursement to the individual or spouse was discontinued.
- The date trust principal or trust income is made unavailable to the individual or spouse by a subsequent transfer into an already existing MQT or SLD. For example, a revocable MQT may have a triggering clause making it irrevocable and unavailable if the beneficiary enters an institution. The date of transfer would be the date of institutionalization since that is when the MQT became irrevocable and the date trust disbursement was stopped. Another example would be when an income only MQT with a clause that terminates the trustee's power to make distributions after the date the individual or spouse enters into an institution.

2) Uncompensated Value Determination

In treating an MQT or portions of an MQT, which cannot at any time or under any circumstances be paid to the individual or spouse, the value of the transferred amount is the value on the date of establishment of the trust or the date that disbursement to the individual or spouse was stopped, or the date funds were transferred into an already existing trust.

- To determine the value of the MQT, or the portion of MQT which cannot be paid to the individual or spouse, do not subtract from the trust the value of any payment made to someone else not for the benefits of the individual or spouse after the date the MQT was established.
- If disbursement to the individual or spouse was stopped, then the uncompensated value of the portion of the trust described above shall be the value of trust property on the day disbursement was stopped.
- If funds were added to that portion of the MQT which could not be distributed to the individual or spouse, after the date the trust was established or the date disbursement was stopped, the transfer of those funds is considered another transfer of property.

Example: Mr. Baker established a \$100,000 irrevocable income only trust in March 1993 with his own funds. The trustee is precluded by the MQT from disbursing any of the principal to, or for the benefits of Mr. Baker but \$50,000 was distributed to Mr. Baker's brother. The trustee can disburse income from the MQT. The \$100 personal allowance and the \$500 payment for upkeep of Mr. Baker's home are distributed from the MQT income are counted as income to Mr. Baker.

Because none of the principal can be disbursed to Mr. Baker, the entire value of the principal at the time the MQT was created is treated as transferred property. The date of transfer is the date the QMT was established (March 1993). The fact that \$50,000 was actually transferred out of the trust to Mr. Baker's brother does not alter the uncompensated value, which remains \$100,000.

If, at some point after the establishment of the MQT, Mr. Baker placed an additional \$50,000 in the trust and none of which could be disbursed to him, this \$50,000 would be treated as another transfer of property.

4. OBRA 93 TRUSTS AND ANNUITIES

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A. Trusts

- 1) An OBRA 93 trust is a trust that is established, in part or in whole with assets of an individual or individual's spouse, on or after August 11, 1993, other than by will;
- 2) The following provisions included in this item shall apply to OBRA 93 trusts without regard to:
 - a) The purpose for which the trust is established.
 - b) Whether the trustee(s) has, or exercises, any discretion under the term of the trust.
 - c) Restrictions on when, or whether, distributions may be made from the trust, or
 - d) Restrictions on the use of trust assets or distributions.
- 3) The following provisions included in this item shall apply to any OBRA 93 trust if it is established by any of the following:
 - a) The individual or his/her spouse; or
 - b) Any other person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or spouse, regardless of whether that person or entity claims to be acting in such a capacity at the time of action; or
 - c) Any other person or entity, including any court or administrative body, acting at the direction, or upon the request of, the individual or spouse.

Exception: Two types of trust for disabled individuals, established on or after August 11, 1993, are to be treated with Item 5.

4) If the OBRA 93 trust is revocable:

- a) The principal and income of the trust shall be considered property available to the individual who has the right, power, and authority to revoke the trust and use the proceeds.
- b) Payments from the trust to, or for the benefit of, the individual or spouse shall be considered income of that individual or spouse; and
- c) If payments are made to any person or entity, other than the individual or spouse, for any purpose other than for the benefit of the individual or spouse, those payments shall be considered transferred assets as of the date of payment.

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5) If the OBRA 93 trust is irrevocable:

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- a) If payment can be made at any time or under any circumstance, to or for the benefits of the individual or spouse:
 - Any actual payment of trust income or principal made to, or for the benefit of, the individual or spouse shall be treated as income of that individual or spouse.
 - Any portion of trust income that could be paid to or for the benefit of the individual or spouse, but is not, shall be treated as follows:
 - If the terms of the trust state that undistributed trust income is principal, then follow procedures for the treatment of principal.
 - If the terms of the trust state that undistributed trust income remains trust income, then treat as available property.
 - Any portion of trust principal that could be paid to, or for the benefit of the individual or spouse, but is not shall be treated as available property.
 - Any portion of trust principal or income that must be paid in the future, to or for the benefits of the individual or spouse, shall be treated as available property regardless of when the payment is, or can be made.
 - Any actual payment of trust principal/income which is not made to or for the benefit of the individual or spouse, shall be treated as a transferred asset as of the date of payment.

Example: Mr. Baker established an irrevocable trust, with a principal of \$100,000, on March 1, 1994, entered a nursing home on November 15, 1994, and applied for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has full discretion in disbursing funds from the trust.

Each month, the trustee disburses from the trust income \$100 as allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home. On June 15, 1994 the trustee gave \$50,000 from the trust principal to Mr. Baker's brother.

The remaining \$50,000 trust principal is considered available property because the trustee has discretion to disburse the entire amount. The \$100 allowance and \$500 for home upkeep are income to Mr. Baker. The \$50,000 to Mr. Baker's brother is treated as a transferred asset because it is not to or for the benefit of Mr. Baker.

b) If payment cannot be made to or for the benefit of the individual or spouse at any time or under any circumstance, or provisions for payments never exist or have been stopped:

- When all, or a portion, of the trust principal cannot be paid to or for the benefit of the individual or spouse, that portion of trust principal shall be treated as a transferred asset.
- When all, or a portion, of the trust income cannot be paid to or for the benefit of the individual or spouse because provisions for distribution never existed, treat the trust income as principal and review the terms of the trust regarding the treatment of the trust principal.
- When all, or a portion, of the trust income cannot be paid to or for the benefit of the individual or spouse because the provisions for distribution have been stopped, treat as follows:
 - If undistributed income becomes principal according to the terms of the trust, review the terms of the trust regarding treatment of principal.
 - If undistributed trust income remains income, treat as a transfer of asset.

Example: Mr. Baker established an irrevocable trust, with a principal of \$100,000, on March 1, 1994, entered a nursing facility on November 15, 1994, and applied for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has full discretion in disbursing income from the trust; however, the trustee is precluded by the terms of the trust from disbursing any of the principal of the trust to, or for the benefit of Mr. Baker. Each month, the trustee disburses from the trust income \$100 as an allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home. On June 15, 1994, the trustee gave \$50,000 from the trust principal to Mr. Baker's brother.

The \$100 and \$500 disbursed from the trust income are counted as income to Mr. Baker. Because none of the principal can be disbursed to Mr. Baker, the entire value of the principal at the time the trust was created (\$100,000 in March, 1994) is treated as a transferred asset.

c) **Determination of available property contained in an irrevocable trust.**

Refer to the trust document to determine whether payments can, under any circumstances, be made from the trust, to or for the benefit of the individual or spouse, regardless of when payments may

Example 1: An irrevocable trust provides that only \$1,000 of the trust principal contained in a \$20,000 trust can be paid out when the individual reaches the age of 18.

If the trust document provides for no other payments, only the \$1,000 will be treated as available property. The remaining \$19,000 (which cannot under any circumstances be paid to, or for the benefit of that individual) would be considered as a transferred asset.

Example 2: An irrevocable trust provides that \$40,000 of the trust principal contained in a \$100,000 trust can be paid by the trustee only in the event that the trustor needs a heart transplant.

There is a circumstance, however remote, when a payment can be made from the trust principal. Therefore, the full \$40,000 would be considered available property to the trustor, regardless of when or whether the payment is made. The remaining \$60,000 cannot, under any circumstances, be paid to, or for the benefit of that individual, and is considered a transferred asset.

d) **Date of Transfer**

The date of the transfer is considered to be one of the following depending on the situation. One or more of the following may occur in a single trust:

- The date the trust was established (the date the original trust document was dated and signed).
- The date on which payment to the individual or spouse stopped.
- The date assets were made unavailable by a transfer into an already existing trust.

- The date available trust assets were transferred to someone or some entity not for the benefit of the individual or spouse.

Example 1: A revocable trust has a triggering clause making it irrevocable and the trust assets unavailable if the beneficiary enters an institution.

The date of transfer in this case would be the date of institutionalization since that is when the trust became irrevocable and the date trust disbursement was stopped.

Example 2: An "income only trust" may have a clause to dissolve the trustee's power to make distributions after the date the individual or spouse enters into an institution.

There may be two transfers. If the income only trust were established with assets or property rights of the individual or spouse then the date of the first transfer would be the date the trust was established. The date of the second transfer would be the date the individual entered the institution since that is the date trust disbursement stopped.

In situations where trust principal or trust income is considered transferred as a result of a "trigger" when an individual enters a nursing facility and the individual is later discharged, the trust principal and income may once again be considered available.

e) **Uncompensated Value Determination**

In treating a trust or portions of a trust that cannot be at any time, or under any circumstances, be distributed to the individual or spouse, the value of the transferred amount shall be its value on the date of establishment, the date that disbursement to the individual or spouse stopped, or the date the assets were transferred into an already existing trust, depending upon the situation. One or more situations may apply to a trust.

- In determining the value of the trust or the portions of the trust that cannot, under any circumstances, be distributed to or for the benefit of the individual or spouse, do not subtract from the trust the value of any payment made to someone else not for the benefit of the individual or spouse, for whatever purpose, after the date the trust was established.
- If disbursement to the individual or spouse stopped, then the uncompensated value shall be the value of the trust assets on the date disbursement was stopped.

- If funds were added to that portion of the trust that cannot be distributed to or for the benefit of the individual or spouse, after the date the trust was established or disbursement was stopped, the transfer of those funds is considered another transfer of assets.

Example: Mr. Maker establishes an irrevocable trust, with a principal of \$100,000 on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing income from the trust; however, the trustee is precluded by the terms of the trust from disbursing any of the principal of the trust to, or for the benefit of Mr. Baker. Each month, the trustee disburses \$100 as an allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives \$50,000 from the trust principal to Mr. Baker's brother.

The trust is irrevocable and none of the trust principal can be distributed. Therefore, the transfer of the entire value of the principal at the time the trust was created (\$100,000 in March 1994) is treated as a transferred asset. The trust income can be distributed. Therefore, the \$100 and \$500 disbursed from the trust income are counted as income to Mr. Baker.

The date of transfer would be the date the trust was established, March 1994, the date the funds were transferred. The fact that \$50,000 was actually transferred out of the trust to Mr. Baker's brother, does not alter the amount of assets transferred by Mr. Baker, because it was not made to, or for the benefit of, Mr. Baker. The transfer amount remains \$100,000, even after the gift to Mr. Baker's brother.

If, at some point after the establishment of the trust, Mr. Baker placed new funds in the trust, none of which could be disbursed to him, or for his benefit, the transfer of the new funds would be treated as another transfer of assets.

B. ANNUITIES

- 1) Annuities Purchased Prior to August 11, 1993, other periodic payment plans not within the definition of annuity, or annuities acquired upon the death of the original annuitant, established by will, or purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary shall continue to be treated in accordance with Article 9, Section 6, Item 5 and Article 10.

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2) Annuities Purchased On or After August 11, 1993 And Do Not Meet one Of The Conditions In 1)

Annuities purchased on or after August 11, 1993, and not subject to treatment under the undue hardship provisions (see 4C.), shall be treated as following.

- Payments from the annuity shall be considered income in accordance with Article 10.
- If payments are deferred at any time, the cash surrender value of the annuity shall be considered available property.

a) Period Certain Annuities

Period Certain Annuities are annuities which provide periodic payments for a period of time specified in the contract.

- Once the individual or spouse receives, or takes steps to receive periodic payments of principal and interest, the balance of the annuity shall be considered unavailable.
- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy, based upon the life expectancy tables compiled by the Actuary of the Social Security Administration (Appendix A). To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.
- If the years of expected life remaining for the annuitant based on the life expectancy tables is less than the years of scheduled payments remaining under the terms of the annuity, and if the annuity cannot be restructured, the payments in excess of the annuitant's life expectancy shall be considered a transfer of property.
- To calculate the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund those payments that exceed the life expectancy on the SSA's tables. Total the payments within the life expectancy, then total the payments beyond the life expectancy. Divide each of the two sums by the sum of the total payments of the annuity, this will result in the percentage of the total payments made within the life expectancy and the percentage of the total payments made beyond the life expectancy. Multiply the original purchase price by the percentage of payments to be made beyond the life expectancy (see "Note" below).

- Any predetermined specified amount or number of payments set aside for any other individual (other than for the sole benefits of the spouse) shall be considered a transfer of property. (See "Note.")
- After payments to the annuitant begin, if payments are later designated to be made to any other individual (other than for the sole benefits of the individual or spouse), the payments shall be considered a transfer of property. (See "Note.")

b) Lifetime Annuities

Lifetime annuities are annuities which provide periodic payments over the lifetime of the annuitant. In the case of a lifetime annuity purchased on or after August 11, 1996:

- (1) If the contract does not allow anyone to receive payments, or provides an unspecified amount for a beneficiary, upon the death of the annuitant, and the annuitant is receiving payments:
 - The individual or spouse must obtain the specific life expectancy tables used by the annuity company to establish his/her specific annuity.
 - If the years of expected life, based on the annuity company's tables for that individual or spouse, are equal to or less than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for that individual or spouse, there is no transfer of property for less than fair market value. Count the payments as income and consider the balance unavailable.
 - If the years of expected life based on the annuity company's tables for the annuitant are greater than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration, and if the annuity cannot be restructured, or the annuitant chooses not to restructure the annuity, there is a transfer of property for less than fair market value (see "Note" below).
 - After payments to the annuitant begin, if payments are later designated to any other individual (other than for the sole benefit of the individual or spouse), the payment shall be considered a transfer of income that may be a disqualifying transfer in the future (see "Note" below).
- (2) If the contract provides that a specific number of payments or a specific amount will go to someone upon the death of the individual, then the

annuitant must restructure the annuity's payments. The restructured annuity payments must conform with the new procedures:

- Once the annuitant takes steps to annuitize the annuity in accordance with these procedures, the balance of the annuity shall be considered unavailable until payment(s) are received.
- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy based upon the life expectancy tables compiled by the Actuary of the Social Security Administration.
- If the annuity cannot be restructured to conform with these procedures, consider the amount set aside or the specific payments for the beneficiary upon the death of the individual or spouse, as property transferred for less than fair market value (see Note below).
- After payments to the annuitant begin, if payments are later designated to another individual (other than for the sole benefit of the spouse), they shall be considered a transfer of income that may be a disqualifying transfer in the future (see Note below).

(3) If the contract provides for a beneficiary upon the death of the individual or spouse to some unspecified amount:

- Once the annuitant takes steps to annuitize the annuity in accordance with these procedures the balance of the annuity shall be considered unavailable until payment(s) are received.
- If the years of expected life, based upon the annuity company's tables for that annuitant, are equal to or less than the number of years indicated on the life expectancy tables compiled by the Social Security Administration for the annuitant, there is no transfer for less than fair market value. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, enter the Social Security Administration's tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.
- If the years of expected life based on the annuity's company tables for that annuitant are greater than the number of years indicated on the life expectancy tables compiled by Social Security Administration for the annuitant:

- The county must advise the individual or spouse that they must take steps to restructure the annuity's payment schedule to one that is based upon a life expectancy that is equal or less than the number of years reflected on the life expectancy tables by the Social Security Administration, for that individual or spouse. When the individual or spouse takes steps to restructure the annuity the balance of the annuity shall be considered unavailable until payment(s) are received.
- If steps are not taken there is a transfer of property for less than fair market value that may be a disqualifying transfer (see Note below).
- After payments to the annuitant begin, if the payments are later designated to any other individual (other than for the sole benefit of the spouse), they shall be considered a transfer of income that may result in a disqualifying transfer in the future (see Note below).

c) Annuities With Deferred Payments

Payments shall be considered deferred when annuities are paid out within the life expectancy established by the SSA's tables but the payments are not fixed, equal (reasonable annual cost-of-living increase less than or equal to 5% is considered equal), monthly payments. The cash surrender value is to be counted. When payments extend beyond the life expectancy of the annuitant based upon the SSA's tables, there has been a transfer of assets that may be a disqualifying transfer. The disqualifying transfer issue must be address first. The worker must not count the cash surrender value of the annuity in cases where a period of ineligibility for a disqualifying transfer is being assessed (Refer to 2)a. above and Appendix C for methods used to determine the amount transferred without adequate consideration which may be a disqualifying transfer).

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VD3d

To determine whether or not the annuity has a cash surrender value, look to the policy provisions. If the policy provisions state that there is no cash surrender value, then there is nothing to count in the property reserve. The payments actually made, however, continue to be considered as income.

(1) Sample Language With A Cash Surrender Value

The following paragraphs represent sample language of an annuity with a possible cash surrender value. In cases where there are penalties for surrendering a policy early, the worker shall count only the amount the annuitant would actually receive.

- Surrender of Policy. Except as provided herein, at any time prior to the Maturity Date, the owner may surrender this policy for its Cash

Value. Such surrender request shall be in writing on a form provided by the Company and signed by the owner. This policy shall accompany the request form and be surrendered. If this policy shall have been previously assigned, any surrender request must be approved in writing by the assignee.

- Surrender Charge. The Surrender Charge on this policy shall be an amount equal to 8% of the Accumulation Value. After the policy has been in force for five years, the Surrender Charge shall be reduced by 2%. It will be reduced by 2% on each policy anniversary thereafter. The Surrender Charge shall also be reduced by any applicable Waiver of Withdrawal Charge. After the policy has been in force eight years, no surrender shall be subject to a Surrender Charge.
- Waiver of Withdrawal Charge. Beginning one calendar month after the Effective Date, up to 1% of the Premium may be withdrawn each month without a Withdrawal Charge. The unused portion of this Waiver of Withdrawal Charge provision is accumulative.

(2) Sample Language Without A Cash Surrender Value

The following paragraphs represent sample language of an annuity without a cash surrender value, In these cases there would be no amount to count. Payments actually made are continued to be considered income.

- Payments. The Payments shown in the Policy Schedule will begin on the Annuity Start Date. The Payments are payable to the Annuitant in the manner described on the Policy Schedule. In no event will less than the Number of Payments Certain be made. The Payments will not be subject to:
 - Transfer, alteration, claims of creditor before any payment is due; or
 - Encumbrance by creditors.

Once this Policy is issued you may not:

- Change the manner in which Payments are made;
- Surrender this Policy for the value of any remaining guaranteed Payments; or
- Take any cash withdrawals or loans from this Policy.

Note: Whenever an annuity has not been properly annuitized, the worker shall advise the individual that he/she must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant/beneficiary that he/she must annuitize the annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the SSA's tables using the annuitant current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Staff must also consider whether the undue hardship provisions (item 4C.) apply before taking any adverse actions. WHEN UNDUE HARDSHIP IS CONSIDERED AND FOUND NOT TO APPLY, THE NOTICE FOR THE ADVERSE ACTION SHALL STATE THAT "THE UNDUE HARDSHIP PROVISIONS WERE CONSIDERED AND FOUND NOT TO APPLY."

Regulations regarding transfer of income are not currently available.

C. Undue Hardship

MEM 9J
VI

Eligibility cannot be denied or discontinued without first considering whether or not undue hardship exists. In considering the undue hardship provisions the individual must demonstrate that the application of the OBRA'93 trust provisions would result in undue hardship. Undue hardship does not exist when application of the trust provisions merely causes the individual, parent or spouse inconvenience.

- 1) For undue hardship to exist, all of the conditions in a) through d) below must be present except that item 1)d) does not apply in the case of an annuity.
 - a) The trust asset cannot, under any circumstances, be used to provide for health care or medical needs of the Medi-Cal applicant or beneficiary, and
 - b) Health Care cannot be obtained from, and medical needs cannot be met by, any source other than Medi-Cal without depriving the individual of food, clothing, shelter, or other necessities of life, and
 - c) The individual's parents (if the individual is under 21) or the individual's spouse, cannot provide for health care and medical needs, or health care coverage for the individual without depriving themselves of food, health care or medical needs, clothing, shelter, or other necessities of life, and
 - d) The court has denied a good faith petition to release the trust assets to pay for the required medical care. A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language that suggests or requests the court do anything other than release the trust assets needed to pay for the required medical care. The worker must verify the petition by viewing both the petition and the court order.

2) **No person shall be made ineligible to the extent otherwise exempt income or property is held in trust.**

3) Annuities purchased between August 11, 1993 and March 1, 1996, which cannot be annuitized to comply with treatment under OBRA'93, shall continue to be treated in accordance with Article 9, Section 6, Item 5. Written verification must be obtained from the entity that issued the annuity verifying that the annuity cannot be restructured.

If undue hardship does apply, only the treatment of the trust under OBRA'93 is waived. The trust must then be considered and eligibility determined under Item 5, Other Trusts.

If undue hardship is found not to apply, the applicant/beneficiary must be sent a notice of any adverse action. This notice must include a statement indicating that the provisions of undue hardship were considered and found not to exist.

5. **OTHER TRUSTS THAT ARE NOT MQTS, SLDs, OR OBRA'93 AS DESCRIBED IN ITEMS 3 AND 4 - REGARDLESS OF THE DATE THEY ARE ESTABLISHED**

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VII

Trusts or SLDs that do not meet the characteristics for treatment in accordance with OBRA'93, and that are not MQTs or SLDs established prior to August 11, 1993, shall be treated in accordance with this item. Such trusts may include, but are not limited to, those contained in the list below.

- Trusts or SLDs established by a will (the Medi-Cal applicant/beneficiary is an heir).
- Certain trusts established for disabled individuals on or after August 11, 1993.
- Blocked accounts established prior to August 11, 1993 which cannot be distributed until a minor reaches age 18.
- Trusts established prior to April 7, 1986, solely for the benefit of a mentally retarded person who resides in an intermediate care facility for the mentally retarded.
- Trusts established by a grandparent with his/her own property for a grandchild's college education, etc.
- Trusts established by the community for the medical and social service needs of an individual.
- Trust accounts opened under the California Uniform Transfers to Minors Act for a child with an adult named as custodian.

A. Availability and Treatment

1) Revocable Trusts

The entire amount of funds held in a revocable trust shall be considered totally available to the Medi-Cal applicant/beneficiary, his/her spouse or members of the MFBU as long as they have the legal right, power and authority to revoke the trust and the right to use the funds.

- a) Trust principal is available property.
- b) Trust interest is income. If the trust income is not distributed in the month of receipt, the trust income is considered income in the month received and is treated as available property in the month following receipt.
- c) Trust assets (income and principal) are not available until distributed when the individual does not have the legal right, power, and authority to revoke the trust and to use trust proceeds.

2) Irrevocable Trusts

The funds in an irrevocable trust shall be considered available only if they are actually distributed.

- a) Funds distributed from trust income shall be considered income.
- b) Funds distributed from trust principal shall be considered available property.

B. Trusts Established On or After August 11, 1993 For Disabled Individuals

Two types of trusts established on or after August 11, 1993 specifically for disabled individuals have been excepted from OBRA'93 provisions. These two types of trusts, **Individual Trusts** and **Pooled Trusts**, are established with the assets or property rights of disabled individuals and shall be treated in accordance with the following procedures.

If a trust is established on or after August 11, 1993 for a disabled individual or disabled spouse, with his/her assets or property rights, which meets the criteria for an **Individual Trust** except that the disabled individual or disabled spouse is age 65 or older, it shall be treated as an OBRA'93 trust. If a trust is established on or after August 11, 1993 for a disabled individual or disabled spouse, with his/her assets, which meets the criteria of a **Pooled Trust** except that the disabled individual or disabled spouse is age 65 or older, the transfer may be considered a disqualifying transfer of assets. The Pooled Trust shall continue to be treated under the procedures in this Item.

1) Individual Trusts

An individual trust must have all of the following conditions:

- a) Was established on or after August 11, 1993; and
- b) Was established for the benefit of the disabled individual or disabled spouse, by a parent, grandparent, legal guardian or the individual, or court; and
- c) The trust, or portion of a trust, contains the assets or property rights of the disabled individual or disabled spouse who was both:
 - Under the age of 65 when the trust was established whether or not he/she is currently age 65 or over, and
 - Who, at the time the trust was established, was determined to be disabled as verified in accordance with Article 5, Section 3, Item 3 and who is currently determined to be disabled; and
- d) Provides that, upon the death of the disabled individual or disabled spouse, or upon termination of the trust, the State shall receive all assets remaining in the trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal.

In addition, there is no requirement in State or Federal law that the State is obligated to submit any type of claim in order to be reimbursed, nor is the State required to include reimbursement from this type of trust as part of its estate recovery process. It is the trustee's responsibility to contact the State to obtain the dollar amount of medical assistance provided by CDHS and then submit that amount, or the amount remaining in the trust, whichever is less, to CDHS Recovery Branch. Any trust which contains provisions allowing reimbursement of medical assistance provided only upon submission of a "claim" or an "Improper claim" shall not be considered an "Other" trust and shall be treated as an OBRA'93 trust.

Note: When a disabled individual or disabled spouse has resided in more than one state, the trust must provide that the funds remaining in the trust be distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on behalf of the individual.

2) Pooled Trusts

Pooled trusts must have all of the following conditions:

- a) Established on or after August 11, 1993; and
- b) Established and managed by a non-profit association; and
- c) Contain the assets of the individual or spouse who is determined to be currently disabled as verified in accordance with Article 5, Section 3, Item 3; and

- d) Maintain a separate account for each beneficiary of the trust (but for purposes of investment and management of funds, the trust pools these accounts); and
- e) Provided that the State, upon the death of the disabled individual or disabled spouse, receives all amounts remaining in that individual's account, equal to the amount of medical assistance paid on behalf of that individual to the extent that amounts remain in that individuals account and are not retained by the trust to cover the costs of that individuals remaining management and investment fees, outstanding bills that fall within the terms of the trust, and burial/funeral expenses.

In addition, there is no requirement in State or Federal law that the State is obligated to submit any type of claim in order to be reimbursed, nor is the State required to include reimbursement from this type of trust as part of its estate recovery process. It is the trustee's responsibility to contact the State to obtain the dollar amount of medical assistance provided by CDHS and then submit that amount, or the amount remaining in the trust, whichever is less, to CDHS Recovery Branch. Any trust which contains provisions allowing reimbursement of medical assistance provided only upon submission of a "claim" or a to proper claim" shall not be considered an "Other" trust and shall be treated as an OBRA'93 trust.

Note: When a disabled individual or disabled spouse has resided in more than one state, the trust must provide that the funds remaining in the trust be distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on behalf of the individual.

- f) Each account is established solely for the benefits of the disabled individual or the disabled spouse by the disabled individual, disabled spouse, his/her parents or grandparents, the legal guardian or that individual, or by a court.
 - (1) The account assets are to benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established, from the time the account was established until the State's interest has been paid. If the account assets are not solely for the benefit of the disabled individual or disabled spouse, then the trust is to be treated as an OBRA'93 trust.

A beneficiary may be named in the trust to receive amounts remaining in the trust upon the death of the primary beneficiary, however, the terms of the trust must be clear that the transfer to the secondary beneficiary occurs only after CDHS has been reimbursed for the medical assistance provided.

- (2) If funds are to be retained by the trust upon the death of the disabled individual or disabled spouse for whose benefit the trust was established, for any purpose other than:

- The cost of the individuals remaining management and investment fee, or
- Outstanding bills for the benefit of the disabled individual or disabled spouse that fall within the terms of the trust, or
- Burial/funeral expenses of the disabled individual or disabled spouse,

the account will not be considered solely for the benefit of the disabled individual or disabled spouse and shall be treated as an OBRA'93 trust.

(3) Addition or Augmentation of Individual or Pooled Trusts

When an Individual or Pooled trust is established for a disabled individual or disabled spouse under the age of 65, the exception from treatment under OBRA'93 continues after that individual or spouse becomes age 65. However, Individual or Pooled trusts cannot be added to, or otherwise augmented with assets of the individual or spouse, after that individual or spouse reaches age 65. Any such addition or augmentation may be considered a disqualifying transfer of assets. Parents of a disabled son or daughter, regardless of age, may make transfers of assets to their disabled son or daughter directly to the son or daughter's Individual or Pooled trust. Such a transfer by a parent would not be considered a disqualifying transfer of assets in determining the eligibility of the parents for Medi-Cal.

(4) Recovery of Costs

To ensure recovery of the costs of medical care, the worker shall notify CDHS Third Party Liability (TPL) Branch whenever either one of these two types of trusts is discovered. The TPL Branch should also be notified whenever the worker finds out that the disabled individual or disabled spouse has died or the trust is being terminated. Send the beneficiary's name, Social Security number, Medi-Cal ID number, and photocopy of the trust documents to:

Department of Health Services
Third Party Liability Branch
Recovery Section – PI
MS 4720
P.O. Box 997425
Sacramento, CA. 95899-7425

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C. California Uniform Gift to Minors Act (CUTMA)/Uniform Gift to Minors Act (UTMA) Trusts

This act provides that a person may make an irrevocable gift to a child that is managed by a custodian for the benefit of the child. The duties imposed on the custodian are similar to the trustee; to manage and prudently invest custodial property solely in the interest of a trust beneficiary. A custodian, unlike a trustor however, does not hold legal title to the property and has no ownership interest. The transferor, who is also the custodian of such property, may choose to restrict his/her custodial power. In that case, none of the funds could be spent before the time of distribution except by court order "upon a showing that the expenditure is necessary for the support, maintenance or education of the minor." If there is no indication that the transferor/custodian has restricted the custodial power, the custodian is free to use the funds for the child's benefit without a court order.

- 1) When a child has an account of this type and is to be included in the MFBU, the value of the account is considered available when no restrictions have been placed on the property.
- 2) When the custodian's power has been restricted, preventing access to the funds except by a court order, the funds shall be considered unavailable. If funds are distributed from the trust income, they shall be considered income. If funds are distributed from trust principal they shall be considered property.

6. OTHER CONSIDERATION REGARDING TRUSTS

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VIII

A. Special Needs Language

1) Overview

A trust may contain special needs "or supplemental needs" exculpatory language.
Example:

"The trustee shall pay to apply for the benefit of John Smith for his lifetime, such amount from the principal or income of the trust estate, up to the whole thereof, as the trustee in its sole and absolute discretion may deem necessary or advisable for the satisfaction of Joseph's special needs."

In addition the trust document may state that:

"No part of the principal or income of the trust shall be used to supplant or replace public assistance benefits of any County, State, Federal, or other governmental entity which has a legal responsibility to serve the beneficiary herein."

2) Treatment

Trusts that contain specific language indicating that funds shall only be used to ensure the individuals health and safety and to supplement public benefits for services and equipment that public programs do not provide may be referred to as a special needs trust (SNT). There are no provisions in Federal law that allow an exemption of trust assets based solely on the exculpatory language.

An SNT may meet the definition of an MQT, an OBRA'93 trust, or may be included in any other trusts. SNTs that are established by will are not MQTs or OBRA'93 trusts. SNTs established as a result of a personal injury settlement at the request of the victim's attorney or parent/guardian prior to August 11, 1993 are considered to be established with the individuals property rights and if other criteria are also met, it is considered to be an MQT and may result in excess property. SNTs established on or after August 11, 1993 are considered OBRA,93 trusts if all other conditions are met, unless it is an excepted Individual or Pooled trust for a disabled individual (see 5B.).

B. Sneede Treatment

If the MFBU is ineligible due to excess property in a trust or annuity owned by a child, unmarried parent, stepparent, or a non-parent caretaker relative, the county shall complete a Sneede property determination to evaluate if there is eligibility for other family members.

Appendix A1

MALES – LIFE EXPECTANCY TABLE #1 (Office of the Actuary of the Social Security Administration)

AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	71.80	30	44.06	60	18.42	90	3.86
1	71.53	31	43.15	61	17.70	91	3.64
2	70.58	32	42.24	62	16.99	92	3.43
3	69.62	33	41.33	63	16.30	93	3.24
4	68.65	34	40.23	64	15.62	94	3.06
5	67.67	35	39.52	65	14.96	95	2.90
6	66.69	36	38.62	66	14.32	96	2.74
7	65.71	37	37.73	67	13.70	97	2.60
8	64.73	38	36.83	68	13.09	98	2.47
9	63.74	39	35.94	69	12.50	99	2.34
10	62.75	40	35.05	70	11.92	100	2.22
11	61.76	41	34.15	71	11.35	101	2.11
12	60.78	42	33.26	72	10.80	102	1.99
13	59.79	43	32.37	73	10.27	103	1.89
14	58.82	44	31.49	74	9.27	104	1.78
15	57.85	45	30.61	75	9.24	105	1.68
16	56.91	46	29.74	76	8.76	106	1.59
17	55.97	47	28.88	77	8.29	107	1.50
18	55.05	48	28.02	78	7.83	108	1.41
19	54.13	49	27.17	79	7.40	109	1.33
20	53.21	50	26.32	80	6.98	110	1.25
21	52.29	51	25.48	81	6.59	111	1.17
22	51.38	52	24.65	82	6.21	112	1.10
23	50.46	53	23.82	83	5.85	113	1.02
24	49.55	54	23.01	84	5.51	114	0.96
25	48.63	55	22.21	85	5.19	115	0.89
26	47.72	56	21.43	86	4.89	116	0.83
27	46.80	57	20.66	87	4.61	117	0.77
28	45.88	58	19.90	88	4.34	118	0.71
29	44.97	59	19.15	89	4.09	119	0.66

Appendix A2

FEMALES – LIFE EXPECTANCY TABLE #2 (Office of the Actuary of the Social Security Administration)

AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	78.79	30	50.15	60	22.86	90	4.71
1	78.42	31	49.19	61	22.06	91	4.40
2	77.48	32	48.23	62	21.27	92	4.11
3	76.51	33	47.27	63	20.49	93	3.84
4	75.54	34	46.31	64	19.72	94	3.59
5	74.56	35	45.35	65	18.96	95	3.36
6	73.57	36	44.40	66	18.21	96	3.16
7	72.59	37	43.45	67	17.48	97	2.97
8	71.60	38	42.50	68	16.76	98	2.80
9	70.61	39	41.55	69	16.04	99	2.64
10	69.62	40	40.61	70	15.35	100	2.48
11	68.63	41	39.66	71	14.66	101	2.34
12	67.64	42	38.72	72	13.99	102	2.20
13	66.65	43	37.78	73	13.33	103	2.06
14	65.67	44	36.85	74	12.68	104	1.93
15	64.68	45	35.92	75	12.05	105	1.81
16	63.71	46	35.00	76	11.43	106	1.69
17	62.74	47	34.08	77	10.83	107	1.58
18	61.77	48	33.17	78	10.24	108	1.48
19	60.80	49	32.27	79	9.67	109	1.38
20	59.83	50	31.37	80	9.11	110	1.28
21	58.86	51	30.48	81	8.58	111	1.19
22	57.89	52	29.60	82	8.06	112	1.10
23	56.92	53	28.72	83	7.56	113	1.02
24	55.95	54	27.86	84	7.08	114	0.96
25	54.98	55	27.00	85	6.63	115	0.89
26	54.02	56	26.15	86	6.20	116	0.83
27	53.05	57	25.31	87	5.79	117	0.77
28	52.08	58	24.48	88	5.41	118	0.71
29	51.12	59	23.67	89	5.05	119	0.66

Appendix B1

ANNUITY EXAMPLES

Example #1: On January 30, 1996, at age 65, Mr. Baker purchases a \$20,000 period certain annuity to be paid over the course of 10 years. Fixed, equal and monthly payments begin March 1, 1996.

At age 65, Mr. Baker's life expectancy is 14.96 years according to the SSA's tables. Since the payout period of the annuity (10 years) is less than the 14.96 years on the SSA's tables, and Mr. Baker is receiving monthly payments, the balance of the annuity is considered unavailable and payments shall be treated as income.

Example #2: On March 10, 1996, at age 65, Mr. Baker purchases a \$100,000 period certain annuity to be paid over the course of 20 years. Fixed, equal and monthly payments begin April 15, 1996.

The payout period of the annuity (20 years) is greater than the life expectancy for Mr. Baker based on the SSA's tables (14.96 years). Mr. Baker is unable to restructure the annuity's payment schedule. The payment scheduled to occur beyond Mr. Baker's life expectancy (20 payment years – 14.96 life expectancy years = 5.04 years of payments) would be considered transferred property that may be a disqualifying transfer.

To calculate the amount that was transferred for less than adequate consideration, total the payments within the life expectancy, then total the payments beyond the life expectancy. Divide each of the two sums by the sum of the total payments of the annuity, this will result in the percentage of the total payments made within the life expectancy and the percentage of the total payments made beyond the life expectancy. Multiply the original purchase price by the percentage of payments to be made beyond the life expectancy.

Appendix B2

ANNUITY EXAMPLES

Example #3: On June 10, 1996, Mrs. Baker purchases a \$50,000 life time annuity with 5 years worth of payments designated to go to her daughter upon the death of Mrs. Baker. Mrs. Baker is 79 years old and her life expectancy based on the SSA's tables is 9.67 years.

Since the 5 years worth of payments were specified death benefits when the annuity was purchased, the total amount of death benefit payments designated for the daughter shall be considered transferred property that may be considered disqualifying. Mrs. Baker's monthly payments are considered income and the balance of the annuity less the death benefits are considered unavailable.

Example #4: Mrs. Baker purchases a \$50,000 life time annuity on April 15, 1996 and designates her daughter as the beneficiary upon her death to receive a cash refund (an unspecified amount). Mrs. Baker is 79 years old and her life expectancy based on the SSA's tables is 9.67 years. The life expectancy established by the annuity company for Mrs. Baker is 8 years.

Since the cash refund will pay the difference between the total amount of the payments made to Mrs. Baker during her life time and the \$50,000 purchase price, and the company's life expectancy for Mrs. Baker is less than the life expectancy by the SSA's tables, the monthly payments are considered income and the balance of the annuity is considered unavailable.

Example #5: Mrs. Baker begins receiving payments from her properly annuitized annuity but designates her daughter as the annuitant after receiving payments for 1 year. The daughter will receive the remaining four years worth of payments which is not for the sole benefits of Mrs. Baker.

The four years of payments will be considered transferred income, which may be a disqualifying transfer in the future.

Appendix C1

ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

This appendix contains analysis of sample annuity payment schedules. The payment schedules represent some annuities that have been annuitized in accordance with the guidelines of the Secretary of the Department of Health and Human Services, as well as some that are not properly structured.

Analysis of #1: Properly Annuitized Period Certain Annuities

The sample payment schedules on this analysis represent annuities that are to be considered properly annuitized. The 15-year guaranteed period coincided with the life expectancy of the annuitant based upon the SSA's tables as of the date the annuity was purchased (or the date of annuitization, whichever was the most recent). Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increase (i.e., less than or equal to 5%).

Analysis of #2: Improperly Structured Period Certain Annuities

The sample payment schedules on this analysis represent annuities that have not been properly annuitized. They are scheduled for 20-year period certain payments. The guaranteed period of 20 years exceed the 15-year life expectancy of the annuitant based on the SSA's tables. In these cases, there may be a disqualifying transfer as of the date the annuity was purchased.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of payments to be made between the company's life expectancy for the annuitant and that established by the SSA, to the total payments. Then multiply this percentage to the original purchase price.

(A) Level Payment Sample

The sum of the payments within the life expectancy is \$120,363.88. The sum of the payments beyond the life expectancy is \$40,121.29. Dividing each of these two sums by the sum of the total payments (\$160,485.17). The result: 75% of the payments will be made during the life expectancy of the annuitant; and 25% will be made beyond the life expectancy. Multiplying the original purchase price of \$100,000 by 25% will result in \$25,000, which is the amount of transfer for less than adequate consideration.

Appendix C2

ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

(B) 3% Annual Increase Sample

The sum of the payments within the life expectancy is \$116,499.63. The sum of the payments beyond the life expectancy is \$51,810.67. Dividing each of the two sums by the sum of the total payments (\$168,310.30). The result: 69.2% of the payments will be made during the life expectancy of the annuitant; 30.8% of the payments will be made beyond the life expectancy. Multiplying the original purchase price of \$100,000 by 30.8% will result in \$30,800, which is the amount of transfer for less than adequate consideration.

Analysis #3: Properly Annuitized Lifetime Annuities

The sample payment schedules on this analysis represent lifetime annuities that have been properly annuitized. The life expectancy of the annuitant based on the SSA's tables coincides with the life expectancy based on the annuity company's tables. Payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living (i.e., less than or equal to 5%).

Analysis #4: Improperly Structured Lifetime Annuities

The sample payment schedules on this analysis represent lifetime annuities that have not been properly annuitized. The company's life expectancy exceeded the 15-year life expectancy of the annuitant based on the SSA's tables. In these cases there may be a disqualifying transfer as of the date the annuity was purchased (or the date the payment plan was established, whichever is the most recent).

To determine the amount that was transferred for less than adequate consideration, determine the percentage of payments to be made between the company's life expectancy for the annuitant and that established by the SSA, to the total payments. Then multiply this percentage to the original purchase price.

The sum of the payments between the two life expectancies (in the level payment plan) is \$24,072.78. Dividing this amount by the sum of the total payments (\$144,436.68). The result: 16.7% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 16.7% will result in the amount of \$16,700, which is the amount transferred for less than adequate consideration.

The same methodology shall also be used for payment plans that include reasonable annual cost-of-living adjustments.

Appendix C3

ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

Analysis #5: Properly Annuitized Lifetime With Period Certain Annuities

A lifetime with period certain annuity combines the features of both the lifetime and the period certain annuities into one. When considering whether a lifetime with period certain annuity has been annuitized in accordance with the SSA's tables, the applicant must provide the life expectancy used by the company as of the date the annuity was purchased or the date the payment plan was established. The company's life expectancy for the annuitant is then compared to that of the SSA's tables. The guaranteed period must also be less than or equal to the life expectancy based on the SSA's tables.

The sample payment schedules on this analysis represent annuities that are to be considered properly annuitized. The payment schedules are for lifetime with 15-year period certain annuities. The 15-year guaranteed period AND the company's life expectancy coincided with the life expectancy of the annuitant based on the SSA's tables as of the date the annuity was purchased or the date of annuitization, whichever was the most recent. Payments are fixed, equal and monthly but may reflect reasonable annual cost-of-living increases (i.e., less than or equal to 5%).

Analysis #6: Improperly Annuitized Lifetime with Period Certain Annuities

(A) Company's Life Expectancy Exceeds SSA's Life Expectancy - Guaranteed Period Coincides

The payment schedules on this analysis represent lifetime with 15-year period certain annuities that have not been properly annuitized. Although the life expectancy for the individual based on the SSA's tables and the 15-year guarantee period coincide, the company's life expectancy for the annuitant exceeds the 15-year life expectancy of the annuitant, as determined by the SSA's tables. In these cases, there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.

In the Level Payment Sample of this analysis, the sum of the payments within the life expectancy based upon the SSA's tables is \$120,363.90. The sum of the payments between the company's life expectancy and the SSA's is \$24,072.78. Dividing each of these two sums by the sum of the total payments (\$144,436.68). Result: 83.3% of the payments will be made during the life expectancy of the annuitant based upon the SSA's tables; and 16.7% of the payments will be made between the two life expectancies. Multiplying the original purchase price

Appendix C4

ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

(\$100,000) by 16.7% will result in \$16,700, which is the transfer without adequate consideration.

The same methodology shall also be used for payment plans that include reasonable annual cost-of-living adjustments.

(B) Life Expectancies Coincide – Guarantee Period Exceeds Life Expectancy

The payment schedules on this analysis represent lifetime with 20-year period certain annuities that have not been properly annuitized. Although the life expectancy for the annuitant based on the SSA's tables and the life expectancy established by the company coincide, the 20-year guarantee period exceeds the 15-year life expectancy of the annuitant according to the SSA's tables. This is determined as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent. In these cases, there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.

In the Level Payment Sample, the sum of the payments within the life expectancy based upon the SSA's tables is \$120,363.88. The sum of the payment between the life expectancy and the end of the 20-year guarantee period is \$40,121.29. Dividing each of the two sums by the sum of the total payments (\$160,485.17). Result: 75% of the payments will be made during the annuitant's life expectancy based upon the SSA's tables; and 25% of the payments will be made between the life expectancy and the end of the 20-year guarantee period. Multiplying the original purchase price (\$100,000) by 25% will result in \$25,000, which is the amount transferred without adequate consideration.

The same methodology shall also be used for payment plans that include reasonable annual cost-of-living adjustment.

Analysis #7: Improperly Annuitized Payment Schedule Representing Deferred Payments

The sample payment schedule on this analysis represents an improperly annuitized annuity with 25% annual cost-of-living increases. Unreasonable annual increases of this sort tend to push the majority of the payments toward the back-end of the payment phase. In these cases, the ET shall count the cash surrender value of the annuity as available property.

Appendix C5

ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

Analysis #8: Small Percentage of Principal Plus Interest Each Year

The sample payment schedule on this analysis represents an improperly annuitized annuity that pays out only interest with .8% of the principal per year. Payment plans of this sort tend to push most of the principal of the annuity into a single payment at the end of the guarantee period. In these cases, the ET shall count the cash surrender value of the annuity as available property.

Analysis #9: Guarantee Period Extends Beyond the Life Expectancy and Unreasonable Annual Cost-of-Living Increases

The payment schedule on this analysis represents a period certain annuity that has not been properly annuitized. The guarantee period of 20 years exceeds the 15-year life expectancy of the annuitant, as determined by the SSA's tables as of the date the annuity was purchased or the payment plan was established, whichever is the most recent. In these cases there may be a disqualifying transfer.

Even though the annuity also provides for an unreasonable 12% annual cost-of-living increase, the federal law requires that payments beyond the life expectancy of the annuitant are to be considered potentially disqualifying transferred assets. The ET must FIRST look to the transfer of property guidelines to determine whether or not there has been a disqualifying transfer. If there is no disqualifying transfer, then in these cases, the ET shall consider the cash surrender value of the annuity.

Appendix C – Analysis # 1

Amount Invested: \$100,000

Rate of Return: 5.00%

Guarantee Period: 15 years

Level Payments		3% Annual Increase	5% Annual Increase
Year	Payment	Payment	Payment
1	\$9,634.23	\$7,981.13	\$7,000.00
2	\$9,634.23	\$8,220.57	\$7,350.00
3	\$9,634.23	\$8,467.18	\$7,717.50
4	\$9,634.23	\$8,721.20	\$8,103.38
5	\$9,634.23	\$8,982.83	\$8,508.54
6	\$9,634.23	\$9,252.32	\$8,933.97
7	\$9,634.23	\$9,529.89	\$9,380.67
8	\$9,634.23	\$9,815.79	\$9,849.70
9	\$9,634.23	\$10,110.26	\$10,342.19
10	\$9,634.23	\$10,413.57	\$10,859.30
11	\$9,634.23	\$10,725.97	\$11,402.26
12	\$9,634.23	\$11,047.75	\$11,972.38
13	\$9,634.23	\$11,379.19	\$12,570.99
14	\$9,634.23	\$11,720.56	\$13,199.54
15	\$9,634.23	\$12,072.18	\$13,859.52
Sum:	\$144,513.43	\$148,440.38	\$151,049.95
Sum<=LE:	\$144,513.43	\$148,440.38	\$151,049.95
Sum>LE:	\$0.00	\$0.00	\$0.00

Appendix C – Analysis # 2

Amount Invested: \$100,000

Rate of Return: 5.00%

Guarantee Period: 20 years

Level Payments			3% Annual Increase		5% Annual Increase	
Life Expectancy	Year	Payment	Payment		5% Increase	
	1	\$8,024.26	\$6,263.79		\$5,250.00	
	2	\$8,024.26	\$6,451.70		\$5,512.50	
	3	\$8,024.26	\$6,645.25		\$5,788.13	
	4	\$8,024.26	\$6,844.61		\$6,077.53	
	5	\$8,024.26	\$7,049.95		\$6,381.41	
	6	\$8,024.26	\$7,261.45		\$6,700.48	
	7	\$8,024.26	\$7,479.29		\$7,035.50	
	8	\$8,024.26	\$7,703.67		\$7,387.28	
	9	\$8,024.26	\$7,934.78		\$7,756.64	
	10	\$8,024.26	\$8,172.82		\$8,144.47	
	11	\$8,024.26	\$8,418.01		\$8,551.70	
	12	\$8,024.26	\$8,670.55		\$8,979.28	
	13	\$8,024.26	\$8,930.66		\$9,428.25	
	14	\$8,024.26	\$9,198.58		\$9,899.66	
	15	\$8,024.26	\$9,474.54		\$10,394.64	
	16	\$8,024.26	\$9,758.78		\$10,914.37	
	17	\$8,024.26	\$10,051.54		\$11,460.09	
	18	\$8,024.26	\$10,353.09		\$12,033.10	
	19	\$8,024.26	\$10,663.68		\$12,634.75	
	20	\$8,024.26	\$10,983.59		\$13,266.49	
Sum:		\$160,485.17	\$168,310.30		\$173,596.26	
Sum<=LE:	\$120,363.88	75.0%	\$116,499.63	69.2%	\$113,287.46	65.3%
Sum>LE:	\$40,121.29	25.0%	\$51,810.67	30.8%	\$60,308.80	34.7%
		\$25,000.00	\$30,800.00		\$34,700.00	

Appendix C – Analysis # 3

Amount Invested: \$100,000

Rate of Return: 5.00%

Lifetime Annuity

Level Payments		3% Annual Increase	5% Annual Increase
Life Expectancy Coincides	Year	Payment	5% Increase
	1	\$8,024.26	\$5,250.00
	2	\$8,024.26	\$5,512.50
	3	\$8,024.26	\$5,788.13
	4	\$8,024.26	\$6,077.53
	5	\$8,024.26	\$6,381.41
	6	\$8,024.26	\$6,700.48
	7	\$8,024.26	\$7,035.50
	8	\$8,024.26	\$7,387.28
	9	\$8,024.26	\$7,756.64
	10	\$8,024.26	\$8,144.47
	11	\$8,024.26	\$8,551.70
	12	\$8,024.26	\$8,979.28
	13	\$8,024.26	\$9,428.25
	14	\$8,024.26	\$9,899.66
	15	\$8,024.26	\$10,394.64
	16	\$8,024.26	\$10,914.37
	17	\$8,024.26	\$11,460.09
	18	\$8,024.26	\$12,033.10
	19	\$8,024.26	\$12,634.75
	20	\$8,024.26	\$13,266.49

Appendix C – Analysis # 4

Amount Invested: \$100,000

Rate of Return: 5.00%

Lifetime Annuity

Level Payments			3% Annual Increase		5% Annual Increase	
Life Expectancy Per Secretary Per Company	Year	Payment	Payment		5% Increase	
	1	\$8,024.26	\$6,263.79		\$5,250.00	
	2	\$8,024.26	\$6,451.70		\$5,512.50	
	3	\$8,024.26	\$6,645.25		\$5,788.13	
	4	\$8,024.26	\$6,844.61		\$6,077.53	
	5	\$8,024.26	\$7,049.95		\$6,381.41	
	6	\$8,024.26	\$7,261.45		\$6,700.48	
	7	\$8,024.26	\$7,479.29		\$7,035.50	
	8	\$8,024.26	\$7,703.67		\$7,387.28	
	9	\$8,024.26	\$7,934.78		\$7,756.64	
	10	\$8,024.26	\$8,172.82		\$8,144.47	
	11	\$8,024.26	\$8,418.01		\$8,551.70	
	12	\$8,024.26	\$8,670.55		\$8,979.28	
	13	\$8,024.26	\$8,930.66		\$9,428.25	
	14	\$8,024.26	\$9,198.58		\$9,899.66	
	15	\$8,024.26	\$9,474.54		\$10,394.64	
	16	\$8,024.26	\$9,758.78		\$10,914.37	
	17	\$8,024.26	\$10,051.54		\$11,460.09	
	18	\$8,024.26	\$10,353.09		\$12,033.10	
	19	\$8,024.26	\$10,663.68		\$12,634.75	
20	\$8,024.26	\$10,983.59		\$13,266.49		
Sum:	\$144,436.68	\$146,663.03		\$147,695.02		
Sum<=LE:	\$120,363.90	83.3%	\$116,499.62	79.4%	\$113,287.46	76.7%
Sum>LE:	\$24,072.78	16.7%	\$30,163.41	20.6%	\$34,407.56	23.3%
	\$16,700.00		\$20,600.00		\$23,300.00	

Appendix C – Analysis # 5

Amount Invested: \$100,000

Rate of Return: 5.00%

Lifetime with 15-year Period Certain

Level Payments		3% Annual Increase		5% Annual Increase	
Year	Payment		Payment		5% Increase
1	\$8,024.26		\$6,263.79		\$5,250.00
2	\$8,024.26		\$6,451.70		\$5,512.50
3	\$8,024.26		\$6,645.25		\$5,788.13
4	\$8,024.26		\$6,844.61		\$6,077.53
5	\$8,024.26		\$7,049.95		\$6,381.41
6	\$8,024.26		\$7,261.45		\$6,700.48
7	\$8,024.26		\$7,479.29		\$7,035.50
8	\$8,024.26		\$7,703.67		\$7,387.28
9	\$8,024.26		\$7,934.78		\$7,756.64
10	\$8,024.26		\$8,172.82		\$8,144.47
11	\$8,024.26		\$8,418.01		\$8,551.70
12	\$8,024.26		\$8,670.55		\$8,979.28
13	\$8,024.26		\$8,930.66		\$9,428.25
14	\$8,024.26		\$9,198.58		\$9,899.66
15	\$8,024.26		\$9,474.54		\$10,394.64
Life Expectancy Coincides	16	\$8,024.26	\$9,758.78		\$10,914.37
	17	\$8,024.26	\$10,051.54		\$11,460.09
	18	\$8,024.26	\$10,353.09		\$12,033.10
	19	\$8,024.26	\$10,663.68		\$12,634.75
	20	\$8,024.26	\$10,983.59		\$13,266.49

Appendix C – Analysis # 6 (A)

Amount Invested: \$100,000

Rate of Return: 5.00%

Lifetime with 15-year Period Certain

		Level Payments	3% Annual Increase		5% Annual Increase	
<div>Life Expectancy</div> <div>Per Secretary</div> <div>Per Company</div>	Year	Payment	Payment		5% Increase	
	1	\$8,024.26	\$6,263.79		\$5,250.00	
	2	\$8,024.26	\$6,451.70		\$5,512.50	
	3	\$8,024.26	\$6,645.25		\$5,788.13	
	4	\$8,024.26	\$6,844.61		\$6,077.53	
	5	\$8,024.26	\$7,049.95		\$6,381.41	
	6	\$8,024.26	\$7,261.45		\$6,700.48	
	7	\$8,024.26	\$7,479.29		\$7,035.50	
	8	\$8,024.26	\$7,703.67		\$7,387.28	
	9	\$8,024.26	\$7,934.78		\$7,756.64	
	10	\$8,024.26	\$8,172.82		\$8,144.47	
	11	\$8,024.26	\$8,418.01		\$8,551.70	
	12	\$8,024.26	\$8,670.55		\$8,979.28	
	13	\$8,024.26	\$8,930.66		\$9,428.25	
	14	\$8,024.26	\$9,198.58		\$9,899.66	
	15	\$8,024.26	\$9,474.54		\$10,394.64	
	16	\$8,024.26	\$9,758.78		\$10,914.37	
	17	\$8,024.26	\$10,051.54		\$11,460.09	
	18	\$8,024.26	\$10,353.09		\$12,033.10	
	19	\$8,024.26	\$10,663.68		\$12,634.75	
20	\$8,024.26	\$10,983.59		\$13,266.49		
Sum:		\$144,436.68	\$146,663.03		\$147,695.02	
Sum<=LE:	\$120,363.90	83.3%	\$116,499.62	79.4%	\$113,287.46	76.7%
Sum>LE:	\$24,072.78	16.7%	\$30,163.41	20.6%	\$34,407.56	23.3%
		\$16,700.00	\$20,600.00		\$23,300.00	

Appendix C – Analysis # 6 (B)

Rate of Return: 5.00%

Rate of Return: 5.00%
Lifetime with 20-year Period Certain

		Level Payments		3% Annual Increase		5% Annual Increase	
Life Expectancy Coincides Guarantee Period	Year	Payment		Payment		5% Increase	
	1	\$8,024.26		\$6,263.79		\$5,250.00	
	2	\$8,024.26		\$6,451.70		\$5,512.50	
	3	\$8,024.26		\$6,645.25		\$5,788.13	
	4	\$8,024.26		\$6,844.61		\$6,077.53	
	5	\$8,024.26		\$7,049.95		\$6,381.41	
	6	\$8,024.26		\$7,261.45		\$6,700.48	
	7	\$8,024.26		\$7,479.29		\$7,035.50	
	8	\$8,024.26		\$7,703.67		\$7,387.28	
	9	\$8,024.26		\$7,934.78		\$7,756.64	
	10	\$8,024.26		\$8,172.82		\$8,144.47	
	11	\$8,024.26		\$8,418.01		\$8,551.70	
	12	\$8,024.26		\$8,670.55		\$8,979.28	
	13	\$8,024.26		\$8,930.66		\$9,428.25	
	14	\$8,024.26		\$9,198.58		\$9,899.66	
	15	\$8,024.26		\$9,474.54		\$10,394.64	
	16	\$8,024.26		\$9,758.78		\$10,914.37	
	17	\$8,024.26		\$10,051.54		\$11,460.09	
	18	\$8,024.26		\$10,353.09		\$12,033.10	
	19	\$8,024.26		\$10,663.68		\$12,634.75	
20	\$8,024.26		\$10,983.59		\$13,266.49		
Sum:		\$160,485.17		\$168,310.30		\$173,596.26	
Sum<=LE:		\$120,363.88	75%	\$116,499.63	69.2%	\$113,287.46	65.3%
Sum>LE:		\$40,121.29	25%	\$51,810.67	30.8%	\$60,308.80	34.7%
		\$25,000.00		\$30,800.00		\$34,700.00	

Appendix C – Analysis # 7

Amount Invested: \$100,000

Rate of Return: 5.00%

Guarantee Period: 15 years

25% Annual Increase

Life Expectancy	Year	Payment
	1	\$1,578.36
	2	\$1,972.95
	3	\$2,466.19
	4	\$3,082.74
	5	\$3,853.43
	6	\$4,816.79
	7	\$6,020.99
	8	\$7,526.24
	9	\$9,407.80
	10	\$11,759.75
	11	\$14,699.69
	12	\$18,374.61
	13	\$22,968.26
	14	\$28,710.33
	15	\$35,887.91
	16	
	17	
	18	
	19	
	20	

Sum	\$173,126.04
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Sum<LE	\$173,126.04
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Sum>LE	\$0.00
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Appendix C – Analysis # 8

Amount Invested: \$100,000

Rate of Return: 5.00%

Guarantee Period: 15 years

Interest + .8% of Principal Per Year

	Year	Payment
	1	\$5,800.00
	2	\$5,760.00
	3	\$5,720.00
	4	\$5,680.00
	5	\$5,640.00
	6	\$5,600.00
	7	\$5,560.00
	8	\$5,520.00
	9	\$5,480.00
	10	\$5,440.00
	11	\$5,400.00
	12	\$5,360.00
	13	\$5,320.00
	14	\$5,280.00
	15	\$93,240.00
Life Expectancy	16	
	17	
	18	
	19	
	20	

Sum	\$170,800.00
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Sum<LE	\$170,800.00
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Sum>LE	\$0.00
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Amount Invested: \$100,000

Rate of Return: 6.00%

Guarantee Period: 20 years

12% Annual Increase

Life Expectancy	Year	Payment
	1	\$2,655.96
	2	\$2,974.68
	3	\$3,331.64
	4	\$3,731.44
	5	\$4,179.21
	6	\$4,680.72
	7	\$5,242.41
	8	\$5,871.50
	9	\$6,576.08
	10	\$7,365.21
	11	\$8,249.04
	12	\$9,238.92
	13	\$10,347.59
	14	\$11,589.30
	15	\$12,980.02
	16	\$14,537.62
	17	\$16,282.13
	18	\$18,235.99
	19	\$20,424.31
	20	\$22,875.23

Sum	\$191,369.00
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Sum<LE	\$99,013.72
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Sum>LE	\$92,355.28
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JOE SMITH SPECIAL NEEDS TRUST

DECLARATION OF TRUST

<i>Trustor / Settlor</i>	→	This trust forms a part of the <i>settlement arrived at between Joe Smith, by and through his Guardian ad Litem, Sally Smith et al., Plaintiffs, and ABC Hospital et al., Defendants, in Case No. 123456, in the Superior Court of the State of California, County of Stanislaus.</i>
<i>Beneficiary</i>	→	The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Section 3604 and 3605 and for certain payments by or on behalf of <i>Joe Smith</i> .
<i>Exculpatory Language</i>	→	The intent of this trust is to provide a <i>discretionary spendthrift trust, to supplement public resources and benefits when such resources are unavailable or insufficient to provide for the Special Needs of the Beneficiary.</i> As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare, when in the <i>absolute discretion of the Trust Advisory Committee</i> , such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America.
<i>Discretion</i>	→	
<i>Principal / Corpus</i>	→	The <i>settlement and all payments</i> thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Joe Smith Special Needs Trust is established, <i>ABC Bank is appointed as Trustee thereof. Sally Smith, Jane Doe, and John Jones are appointed as members of the Trust Advisory Committee</i> , and those parties are authorized by the Court in the above-described action to execute this trust.
<i>Trustee(s)</i>	→	

ARTICLE 1

<i>Trustee</i>	→	<i>ABC Bank is appointed initial Trustee</i> of the trust. Any Trustee shall have the right to resign at any time. ABC Bank shall for any reason cease to act as Trustee, a successor corporate Trustee shall be appointed by the Trust Advisory Committee.
<i>Trustee(s)</i>	→	The term "trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. <i>Sally Smith, Jane Doe, and John Jones are appointed the initial members of the Trust Advisory Committee.</i> There shall always be a minimum of 3 members of the Trust Advisory Committee. All action of the Trust Advisory Committee shall be by majority vote.
<i>Discretion</i>	→	The <i>Trust Advisory Committee shall have the power and the authority, in its absolute discretion, to determine and direct the Trustee concerning payments to be made to or for the benefit of the Beneficiary during his lifetime.</i>

Appendix D2

ARTICLE II DISTRIBUTION OF INCOME AND PRINCIPAL

All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.

*Treatment
of income and
principal*

→

The *income shall be added to and become principal, forming a common fund*. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during his lifetime, such sums and at such times as the Trust Advisory Committee, in its absolute discretion, determines appropriate for the Beneficiary's Special Needs.

*Payment to
State*

→

Upon death of Joe Smith, the Trustees shall *give notice of Joe Smith's death to the directors of the Departments of Health Services and Developmental Services*, and to any county or city and county that has made a written request to the Trustees for such notice, addressed to that county or city and county at the address specified in the request. The Trustees shall *first distribute from the remaining principal and income of the trust to the State Department of Health Services for all medical assistance paid for or reimbursed by the Department up to the amount remaining in the trust*. The State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in the State of California shall be reimbursed *after the State Department of Health Services* for the purpose of reimbursing it for costs and expenses of medical, health, vocational, or other services provided to the plaintiff, and other assistance for such services paid by it to the plaintiff, to the full extent to which it may be so entitled pursuant to law or regulation, and shall distribute any sums remaining thereafter to the plaintiff's surviving children in equal shares or to their issue by right of representation.

Note: THE FOLLOWING LANGUAGE DOES NOT PROVIDE THAT THE STATE DEPARTMENT OF HEALTH SERVICES IS THE FIRST PAYOR AS REQUIRED FOR INDIVIDUAL AND POOLED TRUSTS.

Upon the death of Joe Smith, the *Trustees shall pay all preferred claims of government agencies as set forth in Probate code 3605, the Trustees shall give notice of Joe Smith's death to the directors of the Departments of Health Services and Developmental Services, and to any county or city and county that has made a written request to the Trustees for such notice, addressed to that county or city and county at the address specified in the request. The Departments of Health Services and Developmental Services, and any other state agency which has provided benefits on behalf of Joe Smith during his lifetime, shall be reimbursed and receive all assets remaining in the Trust up to the amount of total medical assistance and other benefits paid for Joe during his lifetime*. If the trust property is insufficient to pay all claims, then the Trustees shall petition the court for instructions and claims

Appendix D3

		shall be paid from the trust property as the Court deems just. The remainder, if any, shall be distributed to Joe's heirs at law.
<i>Exculpatory language</i>	→	<p><i>No part of the interest earned by or the corpus of the trust created herein shall be used to supplant or replace public assistance benefits of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities.</i></p> <p><i>For the purposes of determining the beneficiary's Veterans Administration, Medi-Cal, or any other public benefits programs eligibility, no part of the principal or income of the trust estate shall be considered available to said beneficiary. In the event the trustee is requested by any department or agency administering Medi-Cal or any other benefits to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services which Medi-Cal or any other government benefit program is authorized to provide, the trustee is authorized to deny such request and is authorized to defend, at the expense of the trust estate, any such request.</i></p>
<i>Irrevocable</i>	→	<p style="text-align: center;"><u>ARTICLE III</u> <u>TRUST IRREVOCABLE</u></p> <p>This Trust may not be modified or revoked except by order of the appropriate Court. In no event, shall the beneficiary of this Trust have any right to revise, amend, or modify this Trust or to exercise any power whatsoever with respect to this Trust, except by Order of the appropriate jurisdiction and only by the Trustee.</p>
		<p style="text-align: center;"><u>ARTICLE IV</u> <u>GENERAL PROVISIONS</u></p> <p>This trust has been accepted by the Trustee in the State of California and its validity, construction, and all rights under it shall be governed by the law of that State. This provision shall apply regardless of any change in the place of the administration of the trust, or the change of residence of any Trustee or beneficiary.</p>
<i>Date Established</i>	→	<p>Executed at Modesto, California, this 12th day of August, 1994, pursuant to that certain Order Approving Compromise of Disputed Claim dated July 10, 1994 in Case No. 1234546, Superior Court of the State of California, for the County of Stanislaus.</p>

Appendix D4

Background: The county has already determined that Mr. Smith was 50 years old and disabled on August 12, 1994. He is still disabled.



Discussion: If Mr. Smith and/or his spouse is applying for Medi-Cal, the trust shown above should be considered as an **Individual Trust**, established for a disabled individual excepted from treatment in accordance with OBRA '93 provisions.

- ✓ The trust was established on August 12, 1994 (on or after August 11, 1993),
- ✓ With the assets of Joe Smith, who was under the age of 65 and disabled when the trust was established,
- ✓ By Sally Smith, Mr. Smith's guardian, who had the legal authority to act in place of, or on behalf of, Joe Smith,
- ✓ For the benefit of Joe Smith, a disabled individual,
- ✓ Who is determined to be currently disabled in accordance with Title 22, Section 50167(a).
- ✓ The trust provides that DHS shall be the first to receive all assets remaining in the trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal.
- ✓ The trust is irrevocable.

Funds distributed from trust income shall be considered income in accordance with Article 10. Funds distributed from trust principal shall be considered available property.

Note: If Mr. Smith, age 50, and/or his spouse is applying for Medi-Cal with the trust shown above, except that the trust did not meet all of the criteria for an Individual Trust, the trust should be considered as an **OBRA '93 Trust**.

- ✓ The trust was established on August 12, 1994 (on or after August 11, 1993),
- ✓ With the assets of Joe Smith,
- ✓ By Sally Smith, Mr. Smith's guardian, who had the legal authority to act in place of, or on behalf of, Joe Smith, and
- ✓ It is irrevocable.

The trust provisions provide the trustees with full discretion to release any amount of trust income and trust principal. Payments can be made to or for the benefit of Joe Smith and/or his spouse. Therefore:

- ✓ Actual payment(s) of trust income made to, or for the benefit of Joe Smith or his spouse shall be treated as income in accordance with Article 10.

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- ✓ Actual payment(s) from the trust principal made to, or for the benefit of Joe Smith or his spouse, shall be treated as income in accordance with Article 10.
- ✓ Any portion of trust principal or trust income that could be paid to, or for the benefit of Joe Smith or his spouse, but is not, shall be treated as available property.
- ✓ Any actual payment(s) of trust principal or trust income that is not made to, or for the benefit of Joe Smith or his spouse, shall be treated as a transferred asset.

Note:

If Mr. Smith and/or his spouse is/are applying for Medi-Cal and the trust above was established on August 12, 1992, the above trust would be considered an **MQT** and treated in accordance with Article 9, Section 14, Item 3.

- ✓ The trust was established prior to August 11, 1993,
- ✓ With the assets of Joe Smith, the beneficiary,
- ✓ By Sally Smith, Mr. Smith's guardian, who had the legal authority to act in place of, or on behalf of, Joe Smith.
- ✓ The trustees have discretion to release any amount of trust income and trust principal.
- ✓ The trust is irrevocable.

Even though the trust is not revocable because the trustees have full discretion to distribute trust income and trust principal, the total trust income and trust principal contained in the trust are available whether or not the trustee is actually releasing it.

- ✓ Any amount distributed from the trust principal to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, is available property.
- ✓ The maximum amount from the trust principal that the trustee may distribute to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, but which is not distributed, is available property.
- ✓ Any amount distributed from the trust income to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, but which is not distributed, is available income and subject to treatment under Article 10.
- ✓ The maximum amount from the trust income that the trustee may distribute to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, but which is not distributed, is considered income in the first month and available property thereafter since the terms of the trust provides that income shall be added to and become trust principal.

SAMPLE: BLOCKED ACCOUNT

		San Francisco County Superior Court	
	1	ABCK A LAW CORPORATION	BY: Jerry Jones, Deputy Clerk
	2	222 FRONT STREET	
	3	SAN FRANCISCO, CALIFORNIA	
	4	TELEPHONE: (415) 123-4567	
	5	Attorneys for the Plaintiff and	
	6	Cross-defendant	
	7		
	8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA	
	9	IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO	
	10		
BENEFICIARY →	11	Jane Doe, a minor by	} NO. 123456A
	12	Joyce Doe, Guardian	}
	13		} ORDER TO
	14	Plaintiff,	} DEPOSIT MONEY
	15	v.	}
	16	AAACD Corporation, Defendants	}
	17		
	18		
	19		
TRUSTOR →	20	On approval of a petition of <i>Guardian Joyce Doe, for Jane Doe</i>	
	21	Compromise of Disputed Claim of Minor, and such compromise	
	22	having been approved	

Appendix E2

	1	IT IS ORDERED that Joyce Doe, Guardian for Jane Doe, a minor, shall
	2	deposit the monies belonging to the minor in Play 3 Savings and Loan, a
IRREVOCABLE BLOCKED ACCOUNT →	3	<i>federally insured depository in a federally insured blocked</i>
	4	<i>interest-bearing savings account having no maturity date and that</i>
TRUSTEE →	5	account be in name of the <i>guardian as trustee</i> for the above minor.
	6	The Court finds the minor was born on June 3, 1983. When said
CIRCUMSTANCES UNDER	7	<i>minor attains the age of eighteen years the depository</i>
WHICH PAYMENTS	8	<i>without further order of the Court is authorized and directed to pay by</i>
FROM THE →	9	<i>check or draft upon proper demand all monies, including</i>
TRUST MAY BE	10	<i>interest, hereby ordered to be deposited to the former</i>
MADE TO THE INDIVIDUAL	11	<i>minor.</i> Except for majority, no withdrawals of principal or interest shall be
	12	made from the account without the prior written Court order therefore
	13	bearing the impression seal of this Court.
	14	It is the intention of this court that the funds deposited to this account
	15	be used for the payment of Jane Doe's future medical expenses, if any.
	16	
DATE ESTABLISHED →	17	Dated: January 12, 1993 <u>Stanley A. Smith</u>
		JUDGE OF THE SUPERIOR COURT



Discussion:

If Jane Doe's parents apply for Medi-Cal for themselves and Jane, the trust shown above should be treated in accordance with Article 9, Section 13, Item 5 for the following reasons.

- ✓ The trust was established on January 12, 1993 (prior to August 11, 1993),
- ✓ With the assets of Jane Doe,
- ✓ By Joyce Doe, Jane Doe's guardian, who had the legal authority to act in place of, or on behalf of, Jane Doe, and
- ✓ The trustee does not have discretion to release any amount of trust income or trust principal.

Appendix E3

- ✓ The trust is irrevocable.

The trust principal and trust income shall be considered unavailable if they are not distributed.

- ✓ Funds distributed from trust income shall be considered income in accordance with Article 10.
- ✓ Funds distributed from trust principal shall be considered available property.



Note:

If Jane Doe's Blocked Account was established on August 12, 1993 it would be considered an OBRA '93 trust.

- ✓ Jane Doe's blocked account was established August 12, 1993 (on or after August 11, 1993).
- ✓ With the assets of Jane Doe.
- ✓ By Joyce Doe, Jane Doe's guardian, who had the legal authority to act in place of, or on behalf of, Jane Doe, and
- ✓ Trust income and trust principal is to be paid to Jane Doe, the beneficiary, when she attains the age of eighteen years.
- ✓ The blocked account is irrevocable.

Therefore, since the provisions in the trust provide for payment of principal and income at some time in the future, the entire amount of the trust principal and trust income is to be considered available property, regardless of the fact that the funds cannot be released until Jane Doe reaches the age of 18.



Note:

A blocked account would never be considered an MQT. To be an MQT the trustee must have some discretion. A blocked account does not give the trustee any discretion in distributing trust principal or trust income.

LAST WILL and TESTAMENT

of

JANE DOE

TRUSTOR	→	<p>I, <i>JANE DOE</i>, a resident of the County of Sacramento, State of California, declare this is my will, and I hereby revoke all wills and codicils previously made by me.</p> <p>FIRST: I am a widow. I have one child, namely, <i>SUE DOE</i>. I have no other children, living or deceased.</p>
BENEFICIARY	→	<p>SECOND: I give my entire estate IN TRUST to <i>SUE DOE</i> to be distributed or retained in trust as hereinafter provided.</p> <p>A. The primary beneficiary of this trust is to be <i>SUE DOE</i>, who has a disability that substantially impairs her ability to provide for her own care and custody, and constitutes a substantial handicap. The trustee shall hold, administer, and distribute all trust property allocated to the trust for the benefit of the beneficiary during the beneficiary's lifetime unless the trust is earlier terminated.</p> <p>B. In accordance with the purpose of this trust and subject to the guidelines provided below, the <i>trustee (EMMA JOHNSON)</i> may <i>pay to or apply for the benefit of the beneficiary as much of the trust net income and, if that income is insufficient, the trust principal, as the trustee determines, in the trustee's sole discretion, to be necessary or desirable to meet the beneficiary's needs.</i></p> <p>C. The trustee may, <i>in the trustee's discretion</i>, pay last illness and funeral expenses, any death taxes attributable to any part of the trust estate, and expenses from the administration or distribution of the trust estate.</p> <p>D. No interest in the principal or income of this trust may be anticipated, assigned, encumbered, or subject to any creditor's claim or to legal process before actual receipt by the beneficiary.</p> <p>E. Upon the death of <i>SUE DOE</i> or the termination of this trust, the balance of the trust assets shall be distributed as follows:</p> <p>90% to: AAA Foundation 1 Telegraph Avenue Oakland, CA 94612</p> <p>10% to: The AAA Society Monterey Bay Region 1 Highway 9 Boulder Creek, CA 95006</p>
TRUSTEE	→	
DISCRETION	→	
DISCRETION	→	

THIRD: If any provision of this will is unenforceable, the remaining provisions shall nevertheless be carried into effect.

FOURTH: As used in this will, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

FIFTH: If any beneficiary or legatee under this, my Last Will and Testament, or any person who, if I died intestate, would be entitled to any part of my estate, either in his or her name or in the name of another, contests, controverts, disputes or calls into question the validity of this, my Last Will and Testament, or any provisions contained therein, or any codicils thereto, but shall forfeit any right or claim thereunder and any portion of my estate to which any person opposing my will would in and contingency be entitled, and if in said case any person or persons whomsoever shall be lawfully determined to have a share of my estate, I give, devise and bequeath to such person or persons the sum of One Dollar (\$1.00) and no more, in lieu of any other share or interest in my estate.

EXECUTOR →

SIXTH: I nominate *JOHN J. JOSEPHS* as the executor of this will. The term "my executor," as used in this will, shall include any personal representative of my estate.

I subscribe my name to this will on May 1, 1994 at Sacramento, California

Jane Doe
Jane Doe

On the date written below, JANE DOE declared to us, the undersigned that this instrument consisting of three pages, including the page signed by us as witnesses, was her will, and she requested us to act as witnesses to it. She thereupon signed this will in our presence, all of us being present at the same time. We now, at her request, in her presence and in the presence of each other, subscribe our names as witnesses.

It is our belief that JANE DOE is of sound mind and memory and is under no constraint or undue influence whatsoever. We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 1, 1994, at Sacramento, California.

Jane Smith

Jane Smith

Address: 1234 Second Street
Sacramento, CA 94234

Sarah Strong
Sarah Strong

Address: 1555 Sutter
Sacramento, CA 94234

Appendix F3



Discussion:

After the death of Jane Doe, Sue Doe applied for Medi-Cal. The trust, established by the above will, should be treated in accordance with Article 9, Section 14, Item 5 for the following reasons.

- ✓ The trust was established at the direction of the will,
- ✓ With the assets of Jane Doe,
- ✓ By, Jane Doe, who had the legal authority to act in place of, or on behalf of, Sue Doe, and
- ✓ The trustee, Emma Johnson has discretion to release any amount of trust income or trust principal.

Because the trust is irrevocable:

- trust principal and trust income shall be considered unavailable if not distributed.
- funds distributed from trust income shall be considered income in accordance with Article 10.
- funds distributed from trust principal shall be considered available property.



Note:

The trust above would not be considered an MQT or an OBRA '93 trust for the following reasons.

- ✓ The trust was not established with the assets of Sue Doe.
- ✓ The trust was established by will.

THE ADDAMS FAMILY TRUST

I. Trust Name

This trust shall be known as THE ADDAMS FAMILY TRUST.

II. TRUST PROPERTY

(A) ***Roger and Ruth Addams***, called the “settlor” declare that they have set aside and hold in the ADDAMS FAMILY TRUST, all their interest in the property described in the attached Schedules A, B, and C.

The trust property shall be used for the benefit of the trust beneficiaries, and shall be administered and distributed by the trustee in accordance with this trust instrument.

(B) Either settlor, or both, may add additional or after acquired property to the trust at any time by listing it on the appropriate schedule.

(C) All trust property listed on Schedule A shall remain the community property of settlors, Roger and Ruth Addams. The trust property listed on Schedule B shall remain the separate property of Ruth Addams. The trust property listed on Schedule C shall remain the separate property of Roger Addams.

(D) As long as both settlors live, either settlor may **revoke** THE ADDAMS FAMILY TRUST in writing, at any time, without notifying the beneficiary.

(E) As long as both settlors live, THE ADDAMS FAMILY TRUST may be altered, amended or modified only by joint action in writing by both Roger and Ruth Addams.

III. TRUSTEES

(A) The trustee of THE ADDAMS FAMILY TRUST shall be **Ruth Addams**. The trustee may act for, and represent, the trust in any transaction.

(B) The first settlor to die shall be called the “deceased spouse.” The living settlor shall be called the “surviving spouse.”

(C) Upon the death of the deceased spouse, the trust shall continue in effect as before, with the property of the deceased spouse remaining in the trust for the benefit of the **surviving spouse**, until the death of the surviving spouse, and then distributed to the beneficiary, the trustor's daughter **Rose Addams**, with the rest of the trust assets.

(D) Upon the death or incapacity of the surviving spouse, the successor trustee for THE ADAMS FAMILY TRUST shall be Robert Robin.

Trustor(s)/ →
Settlor(s)

Revocable →

Trustee ➔

Beneficiary(ies) →

Appendix G2

**Date
Established**



Executed at Sacramento, CA on December 5, 1993.

Ruth Addams

Roger Addams

We certify that we have read this Declaration and Instrument of Trust and that it correctly states the terms and conditions under which the trust property is to be held, managed, and disposed of by the trustees, and we approve the Declaration and Instrument of Trust.

Dated: December 5, 1993

Ruth Addams

Roger Addams

Settlors and Trustees

State of California
County of Sacramento

On December 5, 1993, before me, a notary public for the State of California, personally appeared Roger and Ruth Addams known to me to be the settlors and trustees of the trust created by the above instrument, and to be the persons whose names are subscribed to the instrument, and they acknowledged and executed the same as settlors and trustees.

Janice John



Discussion:

Roger and Ruth Addams apply for Medi-Cal on September 10, 1995. The above trust should be treated as an **OBRA '93** trust.

- ✓ The trust was established on December 5, 1993 (on or after August 11, 1993).
- ✓ With the assets of Roger and Ruth Addams, and
- ✓ By Roger and Ruth Addams.
- ✓ The trust is revocable.

Since the trust is revocable:

- ✓ The entire value of the trust principle and trust income retained by the trust is considered available property to Roger and Ruth Addams.
- ✓ Any actual payments from the trust (whether from trust income or trust principle) made to, or for the benefit of Roger and Ruth Addams is treated as income in accordance with Article 10.

Appendix G3

- ✓ Any actual payment from the trust which is not made to, or for the benefit of Roger and Ruth Addams is considered a transfer of assets.



Note:

If Roger and Ruth Addams were applying for Medi-Cal and the trust above was established on **August 12, 1992** the above trust would be considered an **MQT**.

- ✓ The trust was established prior to August 11, 1993,
- ✓ With the assets of Roger and Ruth Addams,
- ✓ By Roger and Ruth Addams,
- ✓ The trust is revocable.

Since the trust is revocable

- ✓ The entire amount of the principal contained in the trust is available property to Roger and Ruth Addams.
- ✓ The entire amount of income is available income to Roger and Ruth Addams and subject to treatment under Article 10.

FAMILY AGREEMENT

This AGREEMENT is made by

(hereinafter collectively called OWNER),

Whereas, OWNER(S) have received assets which have been transferred as completed gifts to OWNER(S) over which OWNER(S) have full and exclusive control and ownership, and;

WHEREAS, said assets were legally and within Federal and State guidelines transferred in order to avoid "spend down" on Long-Term Care assistance or be the subject of an estate claim, and;

WHEREAS, gifting such assets is prudent according to established Elder Law principals; specifically referred to in the Matter of Kashmira Shah 1999 N.Y. Slip Op. 06500 (1999), and under Substituted Judgment doctrines of the California Probate Code Sections 2480, et. Seq. and 3100, et Seq., and;

WHEREAS, OWNER(S) have no contractual or constructive obligation to use said assets for the benefit of any person, and;

WHEREAS, OWNER (S) shall not use said assets for any business purpose or joint profit motive.

WHEREAS, OWNER(S) specifically intend said assets not to be held, and do not consider said assets as being held, in any manner which is considered a device similar to trusts, under the OBRA 1993, or Trust provisions implemented in California Title 22, California Code of Regulations, Section 50489, et Seq. This document shall not create, and is not intended to create a Trust, or similar device, under any collection of laws, including, but not limited to the California Probate Code, the California Health and Welfare Code, California Code of Regulations, nor the Internal Revenue Code.

NOW THEREFORE, OWNER(S), agree among and for themselves exclusively, and not for the benefit of any other person, to hold said assets among themselves for a reasonable time period as described below.

1. OWNER(S) agree to maintain said assets to provide assistance, if any is significantly needed, that a family member may need in the sole and absolute discretion of the OWNER(S).
2. OWNER(S) agree that when such support to any family member is no longer significantly necessary in the discretion of the OWNER(S), for a time period not to exceed 10 years, the funds may be disbursed according to the terms agreed to by the OWNER(S).
3. If a court or government agency determines this agreement renders a family member ineligible for government benefits, for which the family member would be eligible if this agreement did not exist, the OWNER(S) shall terminate the agreement, and on the advice of legal counsel, take whatever lawful and prudent steps are necessary to effectuate the OWNER(S) purpose of the agreement.
4. OWNER(S) acknowledge and assert that _____ has fully explained to the OWNER(S), and that each OWNER completely understands, that the use or spending of the above described assets, prior to the termination of this agreement, violate certain criminal and civil statutes.

Date: _____

PERSONAL PLEDGE

THIS PLEDGE is made by:

(hereinafter collectively called (DONEE), and made for the benefit of

(hereinafter called "INDIVIDUAL").

WHEREAS, INDIVIDUAL owns assets which would be required to be "spent down" on Long-Term Care assistance or be the subject of an estate claim and;

WHEREAS, gifting such assets is prudent according to established Elder Law principals, specifically the Matter of Kashmira Shaw 1999 N.Y. Slip Op. 06500 (1999), and under Substituted Judgment doctrines of the California Probate Code Sections et. Seq.

WHEREAS INDIVIDUAL being a dependent adult, needs special care and considerations to be furnished to him/her throughout the duration of his/her lifetime; and

WHEREAS, DONEE pledges to preserve assets in order to furnish supplemental support, care, and protection for the duration of INDIVIDUAL'S lifetime:

NOW, THEREFORE, DONEE promises to maintain sufficient assets from any gifts received from INDIVIDUAL, during INDIVIDUAL'S lifetime, to provide supplemental support to any government benefits that INDIVIDUAL may be entitled to under State or Federal law.

1. DONEE shall furnish and provide to INDIVIDUAL on an "as needed" basis the following financial support and services over the entire duration of the lifetime of INDIVIDUAL:
 - a) DONEE shall not, during the lifetime of INDIVIDUAL, transfer, spend, encumber, loan, gift, nor waste, any assets received from INDIVIDUAL on DONEE'S personal needs.
 - b) DONEE, with funds received as gifts or transfers from INDIVIDUAL may shop for INDIVIDUAL to obtain personal hygiene supplies, beauty supplies, clothing, shoes, hobby, entertainment and other goods, wares and services for INDIVIDUAL'S use and enjoyment. During INDIVIDUAL'S lifetime, DONEE shall maintain complete discretion to use assets received for the benefit of INDIVIDUAL.
 - c) DONEE shall not make any purchases nor gifts to INDIVIDUAL that would result in the loss or reduction of public benefits, including but not limited to Medi-Cal, Medicare, Social Security Disability Insurance, nor Social Security Insurance.
 - d) DONEE shall not pay expenses incurred by or on behalf of the INDIVIDUAL, or make any distributions to or for the benefit of the INDIVIDUAL, either during or after the lifetime of the INDIVIDUAL, if a government benefit, private insurance, or other program was obligated or available to meet those expenses while the INDIVIDUAL was alive. Specifically, the DONEE does not have discretion to distribute assets where the exercise of such discretion would have the effect of making the assets available for Medi-Cal eligibility purposes for the INDIVIDUAL. This document contemplates and assumes the eligibility of INDIVIDUAL for Medi-Cal benefits. It is one of the express purposes of this document to only supplement the needs of the INDIVIDUAL who is otherwise qualified for Medi-cal benefits and not to render the INDIVIDUAL for those benefits as a result of creating this pledge. This pledge does not contain the assets of the INDIVIDUAL and it is the specific intent of the DONEE to avoid counting the assets herein as belonging to the INDIVIDUAL.

- e) DONEE will seek to obtain services and treatment of appropriate health care providers, including, but not limited to physicians, nurses, nursing home services, mental and physical health specialists, which DONEE deems necessary and reasonable to assess INDIVIDUAL'S physical and mental health status and render treatment, cure and services to meet such physical and mental health circumstances of INDIVIDUAL.
 - f) The DONEE shall have discretion to make adjustments to, or distribution of the assets received by INDIVIDUAL to compensate for or pay any income tax or capital gains tax incurred as a result of receiving or holding the aforementioned gifts, including any actions to minimize any tax consequences of any action of DONEE.
2. There shall be no compensation paid to DONEE in exchange for the above stated promises.
 3. INDIVIDUAL shall not take any actions in reliance as a result of said promises without prior written consent from both DONEE and at least one licensed attorney acting as a representative of DONEE. Any detrimental reliance on the aforementioned promises shall have no effect on the enforceability of such promises without the described express written consent.
 4. INDIVIDUAL may not assign, transfer or convey any rights or benefits of this statement of intent to perform. It is understood and agreed that DONEE's services are personal to INDIVIDUAL and no one else. No interest in these promises may be anticipated, assigned, encumbered, or subject to any creditor's claim or to legal process before actual receipt by the INDIVIDUAL. No part of the assets described herein may be subject to the claims of voluntary or involuntary creditors for any costs incurred or sums expended by any public agency, office, or department of California, any other state, or the United States, for the provision of care and services (including residential care) to or for the INDIVIDUAL (whether prospectively or in reimbursement). If in the DONEE's opinion, a court or government agency determines that this pledge renders the INDIVIDUAL ineligible for government benefits for which the INDIVIDUAL would be eligible if this pledge did not exist, the DONEE shall evaluate the financial loss caused to the INDIVIDUAL by the INDIVIDUAL'S ineligibility for government benefits as compared to the financial gain to the INDIVIDUAL resulting from the pledge's continued operation, to determine whether to maintain the promise or terminate the aid and support promised. If the DONEE determines that the benefits conferred by the promise do not outweigh the detriment caused by the loss of government benefits, the DONEE may, in the DONEE's sole discretion, terminate the pledges made herein.
 5. This document shall not create, and is not intended to create a trust under any collection of laws, including but not limited to the California Probate Code, the California Health and Welfare Code, California Code of Regulations, nor the Internal Revenue Code.
 6. **DONEE(s) acknowledge and assert that the Law Office of _____ has fully explained to the DONEE(s), and that each DONEE completely understands, that the use or spending of the above described gifts, prior to the death of the INDIVIDUAL, would constitute elder abuse under California criminal and civil statutes.**

Dated: _____

X _____ X _____

X _____ X _____